U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B4

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2004

IN RE: Petitioner [redacted]
Beneficia[redacted]

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, initially approved the employment-based visa petition. Upon subsequent review, the director properly issued a notice of intent to revoke, and ultimately revoked the approval of the petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed.

The petitioner is a corporation organized in the State of California in October 1994. It claims to import and export vinyl flooring and tile. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

On the Form I-290B received October 16, 2003, counsel for the petitioner states:

> Petitioner did not receive the AAU decision until October 10, 2003. The envelope containing the decision shows that it was mailed out on October 6, 2003. Therefore petitioner requests additional time to file its brief.
>
> Petitioner has submitted substantial evidence relating to the ineffective assistance of prior counsel. The AAU decision failed to consider the evidence of ineffective assistance prepared in accordance with Matter of Lozada.
>
> The AAU's decision is inconsistent with established precedents. Petitioner requests for 60 days to allow filing of brief by November 16, 2003 on the ground that notice of decision was received on 10/10/2003.

To date, careful review of the record reveals no subsequent submission; all other documentation in the record predates the date stamped Form I-290B. The record on motion is considered complete.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner has not provided new evidence and has not provided a brief identifying an incorrect application of law or Citizenship and Immigration Services (CIS) policy. Counsel's statement that the AAO failed to consider the evidence of ineffective assistance of counsel is inaccurate. The AAO specifically considered the

requirements set out in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The AAO determined that counsel had not provided the evidence required to assert a claim of ineffective assistance of counsel. In addition, the AAO found that no information regarding ineffective assistance of counsel had been submitted to the director to support a motion to reopen and reconsider the director's decision. Moreover, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Finally, it must be noted that an affected party has 30 days from the date of an adverse decision to file a motion to reopen or reconsider. 8 C.F.R. § 103.5(a)(1)(i). If the adverse decision was served by mail, an additional three days are added to the proscribed period. 8 C.F.R. § 103.5a(b). Any motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The petitioner's motion does not meet applicable requirements. The petitioner requested an additional 60 days to submit a brief. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3). In this matter, although the AAO's decision was dated September 17, 2003, the decision was not mailed until October 6, 2003. Accordingly, any brief or evidence must have been submitted by November 10, 2003. As neither counsel nor the petitioner submitted a brief or evidence timely, the motion must be dismissed for failing to meet applicable requirements.

Finally, it should be noted for the record that, unless CIS directs otherwise, the filing of a motion to reopen or reconsider does not stay the execution of any decision in a case or extend a previously set departure date. *See* 8 C.F.R. § 103.5(a)(1)(iv).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. The regulation at 8 C.F.R. § 103.5(a)(4) states that "[a] motion that does not meet applicable requirements shall be dismissed." Accordingly, the motion will be dismissed, the proceedings will not be reopened, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion is dismissed.